

# **EXHIBIT 82**

## **CONFIDENTIAL**

In accordance with a protective order, the enclosure(s) shall be treated as confidential and shall not be shown to any person other than those persons designated in paragraph 8.2 of the paragraph order.

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Page 1

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF WYOMING

----- :  
CUSTODIA BANK, INC., :  
 :  
Plaintiff, :  
 : Case No.  
vs. : 1:22-cv-00125-SWS  
 :  
FEDERAL RESERVE BOARD OF :  
GOVERNORS and FEDERAL RESERVE :  
BANK OF KANSAS CITY, :  
 :  
Defendants. :  
----- :

CONFIDENTIAL DEPOSITION OF  
PETER CONTI-BROWN, PH.D.

DATE: Thursday, December 14, 2023  
TIME: 8:09 a.m.  
LOCATION: King & Spalding, LLP  
1700 Pennsylvania Avenue, N.W.  
Washington, D.C. 20006  
  
REPORTED BY: Erick M. Thacker  
Reporter, Notary

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CONFIDENTIAL

Page 187

1 has issued countless banking -- pieces of banking  
2 legislation, each with -- especially after 1935  
3 and the permanent institution of the FDIC, with a  
4 specific lane of movement for the FDIC, OCC,  
5 Federal Reserve, and state banking authorities,  
6 and so the MCA comes from that legal context.

7 That legal context means that the very  
8 kinds of assessments that we're talking about  
9 here are a supervisory context for the  
10 specifically designated supervisor to respond to.  
11 In some cases, that would be the Fed, in some  
12 cases, the OCC, in others, the FDIC, and in  
13 others, the state banking authorities.

14 But for the Federal Reserve to then say  
15 that it has the authority or the -- or it would  
16 adopt the practice of usurping these other  
17 entities within a financial system is something  
18 that I am not aware of anyone around the passage  
19 of the MCA even contemplating, including at the  
20 Federal Reserve, because it had never been done  
21 in that way before.

22 Q If every bank is unique then isn't it

CONFIDENTIAL

Page 188

1 necessary for Reserve Banks to undertake an  
2 individualized risk assessment of each  
3 institution to assess the risk presented by that  
4 institution to the Reserve Bank?

5 A Most emphatically, no. What it should  
6 do is defer to those exact determinations by the  
7 appropriately situated authority to -- that has  
8 been put in place to assess precisely that risk  
9 profile. And, again, that might be the Fed if  
10 we're talking about member banks, bank holding  
11 companies, financial holding companies, et  
12 cetera, but it might be the OCC, and it might be  
13 the FDIC, and it might be a state banking  
14 authority.

15 Q So for Custodia that would be the  
16 Wyoming Division of Banking?

17 A That's right.

18 Q And so it's your opinion that the  
19 Federal Reserve Bank of Kansas City has to defer  
20 to Wyoming Division of Banking's assessment of  
21 the risk that Custodia presents to the Federal  
22 Reserve Bank of Kansas City?

CONFIDENTIAL

Page 189

1           A       That's right. That deference is the  
2       beating heart of the dual banking system.

3           Q       Okay. And it's your opinion that  
4       Congress intended through the Monetary Control  
5       Act to empower states to be state-chartered --  
6       states to be the gatekeepers of access to Federal  
7       Reserve services?

8           A       Well, the Constitution does -- does  
9       that even preceding the creation of the Federal  
10      Reserve System by creating state banks.

11                   The Federal Reserve System was created  
12      institutionally on top of a system of  
13      state-chartered banks and national-chartered  
14      banks, and so the order of operations is  
15      reversed. The states come first and then the  
16      Federal Reserve.

17          Q       So referring back to the guidelines,  
18      principle 2, here the Board is saying that  
19      Reserve Banks should -- connection with an  
20      account access request should consider whether  
21      the institution presents or creates risk to the  
22      Reserve Bank.

CONFIDENTIAL

Page 190

1 Do you see that?

2 A Which -- which subpoint? Sorry.

3 Q Principle -- Principle No. 2 on page  
4 36.

5 A I see that. And is there a subpart  
6 that you're reading or just --

7 Q No, just --

8 A -- the top? Yeah.

9 Q -- the -- just Principle No. 2.

10 A Yeah.

11 Q And it's your opinion that what  
12 Congress intended with the Monetary Control Act  
13 is that this consideration be handled by the  
14 state banking authority?

15 A No. To be handled by the Federal  
16 Reserve for member banks and for bank holding  
17 companies and financial holding companies, for  
18 the FDIC for state, nonmember banks that were  
19 members of the deposit insurance corporation or  
20 the system, for the Comptroller of the Currency  
21 for national banks and for state banking  
22 authorities for those few banks that were not

CONFIDENTIAL

Page 312

1 on --

2 Q Yeah.

3 A -- my own? For the first half of the  
4 day, I called it the -- the American Samoa Bank,  
5 and then, afterward, I remembered that that's a  
6 misnomer. So you've said it correctly. I said  
7 it incorrectly earlier. The Territorial Bank of  
8 American Samoa.

9 Q I was confused by that.

10 A Good.

11 Q I thought that there was a rival bank  
12 in Samoa --

13 A No.

14 Q -- the whole time that was --

15 A No, it --

16 Q -- flying under the radar.

17 A Very importantly, there is only one  
18 bank in American Samoa.

19 Q All right. So Territorial Bank of  
20 American Samoa. What shall we call it?

21 A Let's call it TBAS or --

22 Q TBAS.

CONFIDENTIAL

Page 313

1           A       -- T-B-A-S.

2           Q       All right. We'll call it -- let's call  
3       it TBAS.

4                    So TBAS is an institution chartered by  
5       American Samoa, correct?

6           A       That's correct.

7           Q       Okay. And you understand that American  
8       Samoa's banking supervision regime includes just  
9       one person?

10          A       I knew -- I know that the supervisory  
11       system within the federal -- sorry -- within the  
12       territory of American Samoa is small. The  
13       territory itself is small. I don't know how many  
14       people work there.

15          Q       Well, let's go to Julie Hill's article,  
16       491. This is Exhibit 305.

17                   MR. SCARBOROUGH: What page did you  
18       say?

19                   MR. MICHAELSON: 491.

20                   MR. SCARBOROUGH: Thank you.

21       BY MR. MICHAELSON

22          Q       The last paragraph begins with a



CONFIDENTIAL

Page 314

1 sentence, "TBAS's banking supervisor is a  
2 one-person shop."

3 Do you see that?

4 A I do see that.

5 Q Do you have any reason to dispute that?

6 A I have not independently verified how  
7 many people work at the banking supervisor in  
8 American Samoa.

9 Q Okay. And she continues that "No  
10 Federal Reserve personnel nor any other federal  
11 bank supervisor has ever visited TBAS in American  
12 Samoa."

13 Do you see that?

14 A I do see that.

15 Q Do you have any reason to dispute that?

16 A I don't.

17 Q Okay. But it's your opinion that TBAS  
18 has an automatic right to a master account and  
19 services, right?

20 A It's my opinion that the framers of the  
21 Monetary Control Act intended for the Federal  
22 Reserve to grant access to master accounts to

CONFIDENTIAL

Page 315

1       legally eligible depository institutions, and  
2       it's further my opinion that TBAS is a legally  
3       eligible depository institution, and so in that  
4       sense, the answer is yes.

5           Q       Okay. What if -- what if American  
6       Samoa's one banking supervisor was corrupt?  
7       Would TBAS still get a master account with  
8       services?

9           A       It's hard to assess hypotheticals in  
10      that sense because -- does corrupt refer to an  
11      allegation of corruption? Does it refer to an  
12      indictment and the like?

13                  But the -- as soon as I said that I'm  
14      of the opinion that TBAS is a legally eligible  
15      depository institution, I want to catch myself,  
16      because I haven't undertaken an independent  
17      evaluation of its legal eligibility.

18                  Here I'm speculating, but if the one  
19      bank supervisor -- if there is one bank  
20      supervisor in American Samoa -- were corrupt and  
21      illegally gave out a charter under the authority  
22      of the territory of American Samoa, then that

CONFIDENTIAL

Page 316

1 would speak to the legal eligibility of TBAS to  
2 participate. And there I -- I would not say -- I  
3 would say that -- in my opinion that the framers  
4 of the MCA did view the question of the Federal  
5 Reserve's participation of -- in assessing legal  
6 eligibility.

7 Q Okay. But if the banking supervisor  
8 was corrupt in the sense that the bank was paying  
9 a supervisor to forego any examination, then TBAS  
10 would still get access to master account  
11 services, right?

12 A My answer to your question would be,  
13 that speaks to me to be a question of legal  
14 eligibility. I think a bank charter that is  
15 gained under false or corrupt pretenses is not a  
16 bona fide charter, and that would speak to the  
17 question of legal eligibility.

18 That question is something that the  
19 Federal Reserve does have, I believe, consistent  
20 with the framing of the MCA, the authority to  
21 independently assess.

22 Q And where -- and where is that

CONFIDENTIAL

Page 317

1 statutory authority?

2 A Again, I don't speak to specific  
3 statutory authority, but in the framing of the  
4 MCA, the question of legal eligibility was  
5 discussed and included in the final statute.

6 Q Okay. And I think we went over this  
7 this morning, but what is -- what is legal  
8 eligibility?

9 A It's not a term that the statute  
10 defines. I've never seen courts define the --  
11 that provision of the statute.

12 I know that other statutes define  
13 eligibility for deposit insurance and that there  
14 have been official opinions on that second  
15 category, but that's distinct from the first, and  
16 so it's open-ended. And that's why I said that I  
17 would be speculating, but I would think that the  
18 corruption of a single supervisor in granting a  
19 charter would speak to the legal eligibility  
20 of -- of a depository institution because it  
21 would speak to whether the charter was bona fide.

22 Q In paragraph 80, if you go to your

CONFIDENTIAL

Page 318

1 report, paragraph 80 on page 32, you write that  
2 in order to -- for TBAS to get a master account,  
3 it had to agree to certain conditions imposed by  
4 the Fed. Do you see that?

5 A I do.

6 Q And that included agreeing to a higher  
7 capital buffer than other banks. Do you see  
8 that?

9 A I do.

10 Q And holding more reserves than  
11 regulations required. Do you see that?

12 A I do.

13 Q And it had to send the Fed monthly  
14 financial statements and agree not to borrow from  
15 the discount window, right?

16 A Yes, I see that I wrote that.

17 Q And it's your opinion that there's no  
18 legal basis for the Fed to impose those  
19 conditions on TBAS?

20 A I don't offer an opinion about a legal  
21 basis for the Fed's actions or inactions.

22 Q But at the end of paragraph 80, you

CONFIDENTIAL

Page 319

1 write, "despite there being no legal or  
2 historical basis for such supervision."

3 A All right. Let me --

4 Q Aren't you opining there's no legal  
5 basis for the Fed to do that?

6 A Thank you for that reading. I can see  
7 why that reading's available. That's not the  
8 intention of my -- of that sentence.

9 What I mean by that is to refer back to  
10 the legal context in which I framed my opinion at  
11 the outset on the first -- in the first  
12 paragraphs, and so here, despite there being no  
13 legal context or historical basis for such  
14 supervision, the context that I'm talking about  
15 here again is the long legal context of the dual  
16 banking system, where the Federal Reserve has not  
17 inserted itself as a supervisor except in those  
18 instances where it has been designated a primary  
19 or secondary supervisor, including for Fed member  
20 banks, bank holding companies, financial holding  
21 companies, Edge Act corporations, and other  
22 similar entities.